

Here, it is unclear whether Defendants' challenge is a factual or a facial one. On the one hand, Defendant asks the Court to apply the Rule 12(b)(6) standard to their argument that Plaintiff lacks standing. (Doc. No. 10, at 5, 6). On the other, Defendants cite to and rely on additional evidence beyond the allegations in Plaintiff's Complaint. (Doc. No. 10, at 9). For example, while Plaintiff complains that Defendants (insurance providers) reimbursed him less than the amount of money that he was charged for medical services (rendered in relation to a vehicle collision), Defendants cite to evidence showing that the lesser amount was accepted as full payment by the medical service provider. (Doc. No. 1, at 4-5; Doc. No. 10, at 7, 8, 9). Thus, Defendants argue that Plaintiff did not have any out-of-pocket expenses and was not injured. (Doc. No. 10, at 6, 7) (citing *Friends of the Earth*, 629 F.3d at 396 (To meet the constitutional requirement for standing, plaintiffs must show that they suffered an injury in fact.)).

To resolve the factual questions raised by Defendants, the Court raises a factual challenge to Plaintiff's standing *sua sponte*. See *MDC Innovations, LLC v. Hall*, 726 F. App'x 168, 172 (4th Cir. 2018) (Lack of subject matter jurisdiction is an issue that may be raised by a court at any time). Further, the Court **ORDERS** the parties to provide supplemental briefs addressing whether the Plaintiff was injured. And, the Court will consider evidence beyond the factual allegation in the Complaint. Defendant's supplemental brief is due **March 13, 2020**, and Plaintiff's supplemental brief in response is due **March 26, 2020**. The supplemental briefs will not exceed eight pages.

SO ORDERED.

Signed: February 19, 2020



Graham C. Mullen
United States District Judge

